(1)

90-445

No.

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1990

D. PATRICK WINBURN, Petitioner

v.

BENNINGTON-RUTLAND SUPERVISORY UNION, Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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I

QUESTION PRESENTED FOR REVIEW

1. Are ex officio boards, which are exclusively made up of elected lower board officials (but which do not automatically include all of those elected lower board officials), "selected by popular election", thereby requiring the application of the one person/one vote principle given this Court's ruling in Morris v. Board of Estimate, 109 S.Ct. 1433 (1989)?

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2. Summary Order of United States Court of Appeals for the Second Circuit, Docket No.: 90-7226 affirming Judgment of District Court filed June 14, 1990 and issued as mandate July 5, 1990.

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CONCISE STATEMENT OF THE GROUNDS ON WHICH JURISDICTION IS INVOKED

A. Date of entry of Judgment or Decree: Summary Order of United States Court of Appeals for the Second Circuit, Docket No.: 90-7226 affirming Judgment of District Court filed June 14, 1990 and issued as mandate July 5, 1990.

B. Statutory provision believed to confer jurisdiction to review the Judgment: Rule 28, §1254, United States Code.

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STATUTES INVOLVED

1. 16 V.S.A. §266:

> For the purpose of holding meetings and transacting the business of a supervisory union, the school board of any district assigned to a supervisory union, and having more than three members, shall elect from such boards three members who shall represent and act for it in meetings of the supervisory union to which it is assigned. But the school board of any district which employs no teacher shall have only one vote in said supervisory union meeting.

2. 16 V.S.A. §423(a)

> Each town school district shall have a school board consisting of three directors, one of whom shall be elected by ballot at each annual meeting of the town school district for a term of three years, beginning the day of election or until a successor is elected and qualified, unless a town school district is a member of a unified union district.

IX

UNITED STATES
CONSTITUTIONAL PROVISION INVOLVED

1. AMENDMENT XIV

Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No States shall make or enforce any law which shall abridge the privileges or immunities of the citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE AND FACTS

This action was filed in the District Court of the District of Vermont on June 15, 1989 alleging that the make-up of the Bennington-Rutland Supervisory Union constituted a violation of the Equal Protection Clause of the 14th Amendment in that the membership is not apportioned according to the population of it's member districts. The lower Court had jurisdiction pursuant to 28 USC §1343. Thereafter, the Defendant, BRSU, filed its Motion for Summary Judgment alleging that the BRSU is not governmental in nature and that the BRSU members were not elected. The Plaintiff, Winburn, thereafter filed his Motion for Summary Judgment alleging that the BRSU was "selected by popular election" and was sufficiently governmental to trigger

constitutional safeguards.

On February 23, 1990, the District Court entered Judgment by granting the Defendant, BRSU's, Motion for Summary Judgment and denying the Plaintiff, Winburn's, Cross-Motion for Summary Judgment.

The Plaintiff, Winburn, brought his Appeal to the Second Circuit Court of Appeals based on the said Judgment. The United States Court of Appeals for Second Circuit affirmed the District Court's Judgment by Summary Order dated February 23, 1990.

The Bennington-Rutland Supervisory Union is an entity created by the Vermont Legislature and adopts policy for and supervises the various town school districts that are within it's jurisdiction.

The BRSU is made up exclusively of elected local town school board members. A person outside of the elected local board cannot be on the BRSU board. All local board members are participating members of the BRSU but the state law limits the boards to a maximum of three votes.

As the lower District Court noted, some local boards have three members and all three members automatically become voting members of the BRSU. Other local boards have five members and three of those five members become voting members on the BRSU board and the other two members become alternate but participating members of the BRSU.

It was the lower Court's opinion that the BRSU members were not "selected by popular election" as required by

Hadley v. Junior College Dist., 390 U.S. 50, 90 S. Ct. 791 (1970) so that the Equal Protection Clause of the 14th Amendment to the Constitution does not guarantee the citizens within the districts the right to the one person/one vote principle. Winburn believes that this is unfair in that his town, Manchester, is entitled to three out of the twenty-one total votes on the BRSU board but pays up to forty percent of the expenses of the BRSU board.

ARGUMENT

I. ROSENTHAL IS IN CONFLICT WITH MORRIS

The lower Court heavily relied on Rosenthal v. Board of Education, 385 F. Supp. 726 (2d. Cir. 1974) in rejecting Winburn's contention that the BRSU board is "selected by popular election"[1], noting that Rosenthal states that "restricting the class of people who may be appointed does not change appointment

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1. Hadley v. Junior College District, supra and its progeny provide that the standard is "is selected by popular election" or similar variations rather than being merely "elected" apparently contemplating a broader standard for this requirement as found in the Supreme Court's recent ruling in Morris v. Board of Estimate, 109 S.Ct. 1433 (1989).

to election"[2].

A similar question was put before this Court in the case of Morris v. Board of Estimate, 707 F2d. 686 (2nd. Cir. 1983), aff'd 109 S.Ct. 1433 (1989) and this Court rejected an argument similar to the one that the BRSU proposes here.

In Morris, a challenge was made to the composition of New York's Board of Estimate. Upon election to their borough councils, the borough Presidents (and others) became members of the Board of Estimate. In rejecting the argument

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2. This statement is dicta in a District Court case and changes the case history that has always held the opposite. In Rosenthal, this Court never specifically found that the ex officio board was made up of exclusively of lower board members. The Court noted that there was an "implication" (See Rosenthal at Page 223) but never made such a strong and precedent setting statement.

that the board was not "selected by popular election" this Court stated at Page 689:

> "It follows that the Board of Estimate is not an appointed body; its membership is definitively determined by election and by election alone.
>
> Moreover, the question of applicability of the Equal Protection Clause to "ex officio" boards was settled in this Circuit in Bianchi v. Griffing, 393 F.2d 457 (2d Cir.1968). In Bianchi, we held the one person, one vote principle applicable to a county board of supervisors selected in a manner virtually indistinguishable from the process by which the Board of Estimate is chosen. The Board at issue in Bianchi consisted of elected town supervisors who served on the county board as "delegates" of their own towns. The language used in rejecting the appellee's argument in Bianchi describes the situation presented here:
>
> > "The mere fact that the board members may be characterized as 'delegates' and perform functions in addition to

> their duties on the board, does not provide a meaningful distinction... We are impelled to the realistic recognition that a citizen entering the voting booth chooses at one and the same time a member of the Board of Supervisors and his town supervisors."

The BRSU argues, however, that the instant case is different from Morris and Bianchi because here only three of the five elected lower board members serve on the ex officio board. The five decide which three of their members will serve on the ex officio board. According to the BRSU's argument, this makes them "appointed" and deprives the voters of their right to the one person/one vote guarantees.

The application of this logic to Morris would lead to illogical results lacking in any meaningful substantive

distinction whatsoever. According to the lower Court's reasoning in Winburn, all the Board of Estimate has to do now is change its charter to call for any one of the borough membership to be on the Board of Estimate, instead of the borough President and this will make the practice "constitutional". If the charter designates the President, it is constitutional. If the charter designates any of the members the practice is unconstitutional. Surely, Hadley did not intend for such fine and meaningless distinctions to be made.

This is significant when viewed in light of the case history of how Courts have distinguished between elected and truly appointed boards. Essentially, Courts have looked at whether there is a direct connection between the voter

and the board representative to determine applicability of the one person/one vote guarantees. If there is no direct connection then there is no guarantee of the one person/one vote principle. If the connection is direct then the one person/one vote principle is applied.

For example, in Sailors v. Board of Education, 387 U.S.105 87 S. Ct. 1549 (1967) the Court, in holding that a local board was appointed and not elected made this distinction evident at Page 110, Note 6 when they stated:

> "There is not even a formal method by which a delegate [from a local school board] can determine the preferences of the people in his district. It is evident, therefore, that the membership of the county board is not determined directly or indirectly, through an election in which the residents of the county participate."

The Sailors Board was made up of anyone - including "outsiders". As the Court similarly states in Sailors at Pages 106-107:

> "Each board sends a delegate to a biennial meeting and those delegates elect a County board of five members, who need not be members of the local boards, from candidates nominated by school electors." Emphasis added.

The policy considerations in Sailors and the subsequent cases interpreting this policy (See also Morris v. Board of Estimate, supra and Bianchi v. Griffing, supra) are that it is vital to determine the connection between the voters who elect representatives and those who represent them. The significance of excluding "outsiders" and making election to a local board a requirement is that the members cannot be considered "appointed" if election is a

prerequisite. It is the same as saying that the voters "appoint" their elected representatives by voting for them.

The rationale is clear and significant - if voters are responsible for putting people in a governmental position then they should be entitled to have their votes equally weighted with those of others who select like representatives.

The BRSU is made up exclusively of elected local board members. See 16 V.S.A. § 266. A person outside of the elected local boards cannot be on the BRSU Board. See 16 V.S.A. §266. All local Board members are participating members of the BRSU but State law limits the boards to a maximum of three votes. See 16 V.S.A. § 266.

II. THE BRSU BOARD IS "SELECTED BY POPULAR ELECTION" WITHIN THE MEANING OF THE EQUAL PROTECTION CLAUSE OF THE 14TH AMENDMENT

The BRSU board is "selected by popular election" within the meaning of the Equal Protection Clause of the 14th Amendment of the Constitution in that election to the local board automatically causes all local board members to either be a voting member of the BRSU board or an alternate and participating member of the BRSU board. See 16 V.S.A. § 266. As the lower Court noted, the members of some local boards are all automatically BRSU members upon election by their towns. Other local boards that have five members elect three of their number to be voting members and the other two members of the local board become alternate but participating members. As this Court has noted in Morris v. Board of Estimate, 707

F.2d 686 (2d. Cir. 1983) affd. 489 U.S. (1989) citing Rosenthal v. Board of Education, 497 F2d. 726, 729 (2d. Cir. 1974) if election as a member of a local board serves automatically to designate that elected member also as a member of an "ex officio" board the one person/one vote concept is violated.

III. VERMONT STATUTES REQUIRE THREE MEMBERS ON LOCAL SCHOOL BOARDS AND THREE MEMBERS ON BRSU BOARD THEREBY CAUSING ALL REQUIRED LOCAL BOARD MEMBERS TO AUTOMATICALLY BE BRSU MEMBERS

It should be noted that 16 V.S.A. §423(a, requires that a town district a town district have a school board made up of a minimum of three directors. They are also, with one exception, mandated by law to have three BRSU board members. See 16 V.S.A. §266. If a

school board chooses to increase it's number of local board members in excess of three it may do so but it is not mandated.

It is clear that the legislature, in setting up local school boards as well as the BRSU, contemplated that all local board members would be BRSU members. If a town chooses to have more than three local board members, the legislature has determined to continue to limit them to three members on the BRSU board.

What the BRSU is really arguing is that the "automatic"[3] nature of local board membership to the BRSU is defeated by a towns' decision to increase its

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3. The BRSU admits that if the local board members were "automatically" elected to the BRSU when they are elected as local board members, the one person/one vote principle would be violated.

local board membership beyond that which is mandated by the state statute. Following the BRSU's logic, this then, is what makes the BRSU board's selection process to be "non-automatic" and therefore appointed and not subject to the one person/one vote principle. This is clearly a distinction without substance.

Such a narrow argument should not be permitted to defeat the control the voters have over their elected leadership. It is clear that this is not what the legislature was originally intending. It can be presumed that this is why the local board members who do not cast votes are allowed to freely participate in meetings and are considered full participating members. This also presumably explains why the

legislature in 16 V.S.A. §266 contemplates a direct connection between the BRSU board and their constituency by directing that the members "shall represent and act for" the local board in meetings of the Supervisory Union. The BRSU does not dispute that BRSU board members are selected as a result of a popular election. Their argument is merely that local board members names were not put on the ballot as BRSU board members and therefore should be considered appointed.

This is the same argument made by the Board of Estimate in Morris v. Board of Estimate and Bianchi v. Griffing, supra, and it should be similarly rejected in this case since it does not provide a "meaningful distinction".

WHEREFORE, Petitioner requests that

this Court enter an Order granting its Petition for Writ of Certiorari on the above-stated grounds.

Respectfully submitted,

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Dated: August 22, 1990

APPENDIX

1. Opinion and Order, Winburn v. Bennington-Rutland Supervisory Union, U.S. District Court for the District of Vermont, Civ. No.: 89-181.

2. Summary Order, Winburn v. Bennington-Rutland Supervisory Union, U.S. Court of Appeals for the Second Circuit, Docket No.: 90-7226.

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF VERMONT

D. PATRICK WINBURN, Plaintiff	:	
v.	:	Civ. No. 89-181
BENNINGTON-RUTLAND SUPERVISORY UNION, Defendant	:	

OPINION AND ORDER

The sole issue in this case is whether the voting apportionment of the Bennington-Rutland Supervisory Union violates the equal protection clause of the United States Constitution. For the forthcoming reasons the court finds that

the Bennington-Rutland Supervisory Union Board is not subject to the fourteenth amendment's guarantee of equal voting strength; therefore, the defendant's motion for summary judgment is GRANTED while the plaintiff's cross-motion for summary judgment is DENIED.

I. BACKGROUND

The material facts in this case are not in dispute. The Bennington-Rutland Supervisory Union (BRSU) was established pursuant to Vt. Stat. Ann. tit. 16, §261 which authorized the creation of supervisory unions throughout Vermont by combining appropriate school districts into one supervisory union. The BRSU consists of the school districts of Danby, Dorset, Manchester, Mt. Tabor, Pawlet, Rupert, Sandgate, Sunderland, and

Union District #23. The duties of a supervisory union are prescribed by Vermont law. In general, supervisory unions are required to: coordinate and implement curriculum plans for the sending and receiving schools in the union; disburse federal and state funds; establish policies in the professional development of teachers employed in the supervisory union; and provide special education services to the member districts. Vt. Stat. Ann. tit. 16, §261a(1)-(7). In addition, supervisory unions are empowered to provide the following services to their member districts: centralized purchasing; construction management; budgeting and accounting; teacher negotiations; and transportation. §261a(8).

The implementing statute authorized

three members of the school boards of the member school districts to serve as the supervisory union representatives. §266. Thus, in general, each school district has three votes in conducting the business of the supervisory union.[1] When union representatives. Id. Regardless of the number of school board members, however, the BRSU By-Laws allows the school board to elect a single member to the school board of a school district has more than three members, the school board is required to elect three of its members to act as the school board's supervisory represent it and thus cast the school

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[1] If a school district, however, does not employ any teachers, the school district is entitled only to one vote in conducting supervisory union business. Vt. Stat. Ann. tit. 16, §266.

district's votes on BRSU business.[2] BRSU By-Laws, Art. 5.

As structured, the implementing statute allows smaller towns to have as many representatives or votes on the supervisory union as larger towns. The Manchester School District, for example, has a total population of approximately

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[2] The BRSU By-Laws were adopted at the annual meeting of the BRSU in March, 1974. In 1983, however, the Vermont Legislature repealed Vt. Stat. Ann. tit. 16 §265 which had authorized school boards to elect one member to represent it and cast three votes in conducting supervisory union business. The parties do not address whether the repeal of §265 invalidates the corresponding provision of the By-Laws. To its benefit, defendant does not dispute plaintiff's assertion that the By-Laws are in full force and effect. At any rate, while this provision of the By-Laws may support defendant's contention that the BRSU representatives are "appointed" as opposed to "elected," it is not a determinative element of the court's holding; therefore it would be improvident for the court to pass judgment on its validity.

3,580 and has three representatives or votes on the BRSU while the Sunderland School District has a total population of approximately 850 and also has three representatives or votes; thus, in Manchester one vote on the BRSU represents approximately 1,190 persons while in Sunderland one vote represents approximately 280 persons. In light of these figures, it is not disputed that the apportionment of voting in the BRSU is disproportional to the population of each individual school district; therefore, this court need only decide, as a matter of law, whether the BRSU is subject to the fourteenth amendment's guarantee of equal voting strength as espoused by Reynolds v. Simms, 377 U.S. 533 (1964), and progeny.

II. DISCUSSION

The determination of whether the equal protection clause's guarantee of equal voting strength applies to a governmental body requires a two prong analysis. First, the body must be "elected." Hadley v. Junior College Dist., 397 U.S. 50, 56 (1970). Second, the entity must perform governmental functions which are general enough and have sufficient impact throughout the district as to require that elections to that body comply with equal protection strictures. Id. at 54; Barnes v. Board of Directors, Mt. Anthony Union High School Dist., 418 F.Supp. 845, 847 (D.Vt. 1976).

A. Elected Officials

The equal protection clause is not

violated if a State chooses to select members of an official body by appointment rather than election even though the officials appointed do not represent the same number of people. Hadley, 397 U.S. at 58. At first blush, it appears that the selection process for the BRSU Board falls somewhere between two Supreme Court decisions. On the one hand is Board of Estimate v. Morris, 489 U.S. ___, 109 S.Ct. 1433, 103 L.ED.2d 717, 727 (1989), where the Court held that members of New York City's Board of Estimate were "elected" officials because, as a matter of law, the borough presidents automatically became Board of Estimate members upon their election as borough president. Morris, however, is not directly analogous to the instant controversy because BRSU representatives

are selected from among the school board members of local school districts and are not, as a matter of law, automatically BRSU representatives upon their election to the local school boards.[3]

On the other hand, is Sailors v. Board of Educ., 387 U.S. 105 (1967), where the Court held that county school board members were "appointed" rather than "elected" notwithstanding that the

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[3] The court recognized that the local school boards of school districts are often comprised of only three members and thus, as a practical matter, all three might "automatically" act as the supervisory union representatives. This result, however, is not mandated by Vermont law and is therefore, inconsequential for equal protection purposes. See Vt. Stat. Ann. tit. 16, §423(b) (school board of school district may consist of up to five members). The fact that a local school district chooses to have only three local school board members is beside the point; it is not required to do so.

local school board members, in effect, elected the members of the county school board.[4] Sailors, however, also differs from the instance case because, unlike the BRSU, election to the local school board in Sailors was not a prerequisite to serving on the regional board. Id. at 107. Because of these distinctions neither Morris nor Sailors provide a definitive answer to whether BRSU representatives are "elected" when they are chosen by and consist of members of the local school boards.

Fortunately, the court is not without further guidance to resolve this important question. Specifically, in

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[4] The local school board in Sailors would first select delegates amongst themselves who would in turn elect the regional board members. 387 U.S. at 106-07.

Rosenthal v. Board of Educ., 385 F.Supp. 223 (E.D.N.Y. 1974), affirmed without opinion, 420 U.S. 985 (1975), which is not cited by either party, a three judge panel held that a regional school board was "appointed" even though the local school boards were each required to choose the regional school board members from those persons serving on their "elected" local school boards. In rejecting the equal protection claim, the court reasoned that "'restricting the class of people who may be appointed does not change appointment to election.'" Id. at 226 (quoting Rosenthal, Civ. No. 72-821 at 11 (E.D.N.Y. Oct. 9, 1973) (district court decision prior to convening three-judge panel)). Rosenthal thus expressly refutes plaintiff's contention that BRSU Board " members

cannot be considered "appointed" if election is a perquisite [sic]." Plaintiff's Memorandum in Support of Motion for Summary Judgment at 14 (November 29, 1989). Furthermore, the Rosenthal court rejected the argument that because the general electorate possessed the power to remove the regional school board members by refusing to reelect them to the local school board, the regional board was in effect "elected": "[I]t does not follow that the power of removal is the test of whether a person is appointed or elected." Id.

The method by which the regional board members were chosen in Rosenthal is virtually the same method in which representatives to supervisory unions in Vermont are chosen, to wit: the regional board must be both comprised of and selected by the local board members.

Moreover, Rosenthal and the present case both involve a statutory scheme in which the total number serving on the local board could equal the number allowed to serve on the regional board; thus, in such circumstances, as a practical matter the election of the local board members also determined who would serve on the regional board.[5]

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[5] The statute involved in Rosenthal goes further than the Vermont statute and provides that when the school district has one trustee that member represents the district on the regional board. 385 F.Supp. at 225. The court does not believe this provision renders Rosenthal in conflict with Morris because there the applicable statute apparently allowed the election of only one president for each borough who in turn would automatically serve as a board of estimate member. 103 L.Ed.2d at 727. In contrast, in Rosenthal the applicable statute did not mandate that the elected members of the local board per se became members of the regional board; rather, they did so only if the electors of the local school district chose to elect only one trustee.

In light of Rosenthal and the Supreme Court's summary affirmance thereof, the court concludes that the school district representatives on the BRSU are "appointed" rather than "elected" officials; therefore, the BRSU is not subject to the equal protection clause's guarantee of proportional voting.[6] See also Burton v. Whittier Regional Vo-Tech School, 587 F.2d 66, 70 (1st Cir. 1978)(relying on Rosenthal to uphold a two-tier system of selecting regional school board members). Notably, this holding also comports with the

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[6] A summary affirmance by the Supreme Court is binding precedent and constitutes an endorsement of the lower court's result though not necessarily its reasoning. See Soto-Lopez v. New York City Civil Serv. Comm'n, 755 F.2d 266, 272 (2d Cir. 1985), aff'd, 476 U.S. 898 (1986); Picou v. Gillum, 813 F.2d 1121 (11th Cir. 1987).

Supreme Court's observation that "The Constitution does not require that a uniform straitjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems." Avery v. Midland County, 390 U.S. 474, 485 (1968).

2. Governmental Functions

Because the court holds that BRSU representatives are "appointed" rather than "elected" officials, there is no need to reach the issue of whether the BRSU performs governmental functions which are general enough and have sufficient impact throughout the supervisory union as to require that elections to that body comply with equal protection strictures.

CONCLUSION

The plaintiff has failed to establish that the BRSU Board is selected by popular election; consequently, the equal protection clause's guarantee of one-person, one-vote does not apply. Plaintiff's cross-motion for summary judgment is thus DENIED while the defendant's motion for summary judgment is GRANTED.

SO ORDERED

Dated at Rutland in the District of Vermont this 23rd day of February, 1990.

/s/ Franklin S. Billings, Jr.
Franklin S. Billings, Jr.
Chief Judge

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the 14th day of June, one thousand nine hundred and ninety.

Filed June 14, 1990, Elaine B. Goldsmith, Clerk.

P r e s e n t:

HONORABLE J. EDWARD LUMBARD,

HONORABLE THOMAS J. MESKILL,

HONORABLE GEORGE C. PRATT,

Circuit Judges.

D. PATRICK WINBURN,

Plaintiff-Appellant,

v. Docket No. 90-7226

BENNINGTON-RUTLAND SUPERVISORY UNION,

Defendant-Appellee.

This is a pro se appeal from a judgment entered in the United States

District Court for the District of Vermont, Billings, C.J., granting defendant-appellee's motion for summary judgment and denying plaintiff-appellant's cross-motion for summary judgment. The district court held that representatives of local school districts on the Bennington-Rutland Supervisory Union (BRSU) are not elected officials, and therefore the fact that the apportionment of voting in the BRSU is disproportionate to the population of each local school district does not violate the equal protection principle of one person, one vote.

This cause came on to be heard on the transcript of record from said district court and was argued by appellant pro se and by counsel for the appellee.

The judgment of the district court is AFFIRMED.

We agree with the district court that the Fourteenth Amendment's guarantee of equal voting strength does not apply in this case because the BRSU representatives are appointed, not elected officials. Accordingly, we affirm the judgment of the district court substantially for the reasons stated by Chief Judge Billings in his Opinion and Order dated February 23, 1990.

/s/ J. Edward Lumbard
J. Edward Lumbard, U.S.C.J.

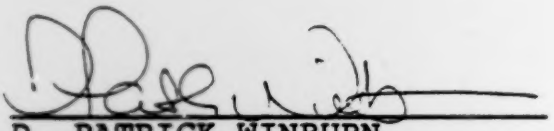
/s/ Thomas J. Meskill
Thomas J. Meskill, U.S.C.J.

/s/ George C. Pratt
George C. Pratt, U.S.C.J.

N.B.: This Summary Order will not be published in the Federal Reporter and should not be cited or otherwise relied upon in related cases before this or any other court.

CERTIFICATE OF SERVICE

I hereby certify that three true and exact copies of the foregoing have been forwarded by pre-paid registered mail to Peter S. Cullen, Esquire at Theriault & Joslin, P.C., 141 Main Street, Post Office Box 552, Montpelier, Vermont 05601-0552, on this the 22nd day of August, 1990.



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